



# Public Utility Commission of Texas

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Robert W. Gee  
Chairman

Karl R. Rábago  
Commissioner

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Commissioner

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DEC 22 1994

FCC MAIL ROOM

December 16, 1994

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Subject: CC Docket No. 94-129, Policies and Rules Concerning  
Unauthorized Changes of Consumers' Long Distance Carriers  
Notice of Proposed Rulemaking

Dear Mr. Caton:

Enclosed for filing are an original and nine copies of Comments of the Public  
Utility Commission of Texas in the above-referenced proceeding.

Sincerely,

*Rowland L. Curry by cclaw*

Rowland L. Curry, P.E.  
Director  
Telephone Utility Analysis

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**DEC 22 1994**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

**FCC MAIL ROOM**

In the Matter of

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Policies and Rules Concerning

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CC Docket No. 94-129

Unauthorized Changes of Consumers'

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Long Distance Carriers

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DOCKET FILE COPY ORIGINAL

**COMMENTS OF  
THE PUBLIC UTILITY COMMISSION OF TEXAS**

**I. INTRODUCTION**

1. In its Notice of Proposed Rulemaking (NPRM) issued November 10, 1994, the Federal Communications Commission (FCC) proposes to add to its rules Section 64.1150 regarding Letter of Agency Form and Content. The proposed rule would (i) restate and organize the FCC's letter of agency (LOA) requirements found in previous orders into one standard rule; (ii) prohibit the inclusion of an inducement to change a consumer's primary interexchange carrier (PIC) from appearing on the same document as an LOA; and (iii) prohibit "negative option" LOAs, which purport to require consumers to take some action to avoid having their PIC changed. In addition, the FCC requests comments regarding whether the LOA should be restricted so that only the IXC that actually sets the rates for the consumer is identified, or whether other carriers' names can be included if their roles are clearly identified.

## II. COMMENTS ON THE FCC's PROPOSED ACTION

2. The Public Utility Commission of Texas (PUCT) supports the FCC's proposal to organize its LOA requirements into one standard rule. This clarification of the requirements of the *Allocation Order* and *PIC Verification Order* will benefit the public by making it easier for IXCs to understand and comply with the requirements and for agencies like the PUCT to assist consumers who have complaints about slamming.

3. Since the beginning of our fiscal year on September 1, the PUCT has received 74 complaints about slamming. In the 1993-94 fiscal year, we handled 148 slamming complaints, down from 391 the previous year. We attribute the decline in 1993-94 to the FCC's issuance of its *PIC Verification Order* and *PIC Verification Reconsideration Order* in 1992 and 1993, which provided procedures for verification of long distance service telemarketing sales.

4. The FCC proposes in subsection (c) that a letter of agency may not be combined with inducements of any kind on the same document. The PUCT would suggest that monetary or service-specific inducements (e.g., the offer of a check or discounted service for some period of time) have not been the source of complaints and should be allowed on an LOA with the safeguards that are proposed in subsection (d). The use of sweepstakes, contests or merchandise should not be permitted as inducements on an LOA. These recommendations are based on our experience with consumer complaints and on our beliefs that a competitive interexchange market is in

the public interest and that monetary and service-specific inducements offer significant benefits to consumers and help the functioning of the competitive market.

5. Consumers face transactions costs to change their PICs. In addition to the inconvenience, a Southwestern Bell customer in Texas must pay a fee of \$5.00 to change her PIC. Other LECs charge similar fees. Monetary inducements and discounts offered by IXCs reduce these transactions costs by compensating consumers for the monetary and nonmonetary costs of changing their PICs. When consumers can change carriers easily, with little or no transactions cost, they are more sensitive to the rates charged by their long distance company and others. This sensitivity to rates means that the consumer's demand is more elastic. The more elastic the demand of consumers, the less market power each IXC has.

6. Since September 1, 1994, the PUCT has received four complaints regarding LOAs that clearly involved sweepstakes or contests. These consumers complained that they were unaware that the sweepstakes entries they signed were LOAs to change their long-distance service. A fifth consumer reported that she was offered gifts worth \$4,000 if she switched carriers; another reported being slammed as a result of subscribing to a magazine.

7. During this period, the PUCT has not received a single consumer complaint regarding a monetary inducement. Consumers have not complained that monetary inducements are inappropriate or that the information provided on checks that serve as LOAs is inadequate or misleading.

8. The FCC proposes in subsection (e) to prohibit an LOA that contains a “negative option” instructing the subscriber to take some action to avoid a change of PIC. If this subsection is intended to proscribe the negative check-off that appears on some sweepstakes entries, the PUCT believes this language is unnecessary if the combination of a sweepstakes entry and LOA on the same form is prohibited, as supported by the PUCT at paragraph 4.

9. If the “negative option” refers to language in an LOA that purports to instruct a local exchange carrier (LEC) to freeze the consumer’s PIC until further written notice from the subscriber, the PUCT supports the prohibition. We have assisted several consumers who have signed LOAs which contained instructions to the LEC to make no further PIC changes to the consumer’s account without written authorization from the subscriber. Based on our experience with these complaints, we believe the public interest is better served if the LOA and instructions to the LEC regarding future PIC changes be transmitted in separate documents. In no event should an IXC act as a consumer’s agent in requesting that further PIC changes may be requested only in writing; such requests should be made directly by the consumer to the LEC.

10. Regarding the identification of multiple carriers on an LOA, we believe it will reduce consumer confusion if an LOA is allowed to identify the consumer’s PIC, the carrier that sets the rates and, if different, the name of the carrier whose name will appear on consumer bills. The underlying carrier should not be identified unless that carrier directly sets the rates for the consumer (as opposed to

setting rates that are “mirrored” by the consumer’s PIC), is the PIC identified in the LEC’s records or is the carrier whose name appears on consumer bills.

### **III. SUMMARY AND CONCLUSION**

11. The PUCT receives a significant number of consumer complaints regarding slamming. The number of complaints has declined from a high of 391 in fiscal year 1992-93. The great majority of these complaints involve practices by IXC’s that are prohibited by the FCC’s current rules. We support the FCC’s present effort to clarify and standardize its rules regarding LOAs in the hope that such clarification will improve compliance with its rules and reduce the number of consumer complaints.

12. We recommend modification of the FCC’s proposed rule to limit inducements in an LOA to those that are monetary or are related to telephone service. This modification would prohibit the use of an LOA that serves as an entry form for a sweepstakes or contest.

13. We support the FCC’s proposal to prohibit “negative option” LOAs if that term refers to LOAs that contain a statement purporting to prevent future changes to a consumer’s PIC without written authorization.

14. We recommend that, if the FCC restricts the names of IXC’s that may appear on an LOA, it permit the PIC, the carrier directly setting the rates for that consumer, and the carrier whose name appears on the consumer’s bill to be identified on the LOA and require that their roles be clearly identified.

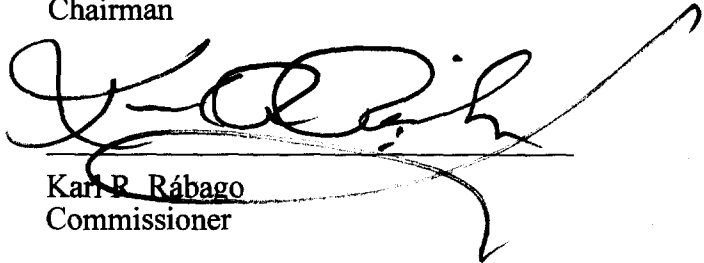
Respectfully submitted,

Public Utility Commission of Texas  
7800 Shoal Creek Blvd.  
Austin, Texas 78757

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